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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,342	02/26/2004	Howard David Hutton III	AA-615M	3969
27752	7590	05/18/2006	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			DOUYON, LORNA M	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/787,342	HUTTON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Loma M. Douyon	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3 pages</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

***Specification***

1. The disclosure is objected to because of the following informalities: on page 11, line 12, the phrase “(Serial numbers to be inserted when received.)” should be deleted.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, 6, 7, 8-10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fowler et al. (US Patent No. 5,635,469), hereinafter “Fowler”.

Fowler teaches a foam producing cleansing product which comprises a foamable cleansing composition and a compressible nonaerosol dispenser (see col. 4, lines 13-15), the

Art Unit: 1751

foamable cleansing composition comprising from about 0.1% to about 20% of a surfactant and from about 35% to about 99.65% water (a solvent) (see col. 2, line 59 to col. 3, line 28). Foams containing relatively large diameter bubbles can be refined by forcing said foams through various foam refining means including screens, porous frits, porous media (which reads on sponge) and combination thereof (see col. 19, lines 63-66). The volumetric flow rates of the composition are about right for skin and hair care products and cleaning products such as shampoo and kitchen cleanser (see col. 27, lines 13-26). The dispenser generally contains instruction for use. Even though Fowler does not explicitly disclose the foam to weight ratio of the composition, the effective foaming dilution range, and/or effective solubilization dilution range as those recited, it would be inherent in the composition of Fowler to exhibit the same characteristics because the same ingredients and dispenser have been utilized. Even if the teachings of Fowler are not sufficient to anticipate the claims, it would have been nonetheless obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the foam to weight ratio, the effective foaming dilution range, and/or effective solubilization dilution range of Fowler to be within those recited because similar, if not the same, ingredients contained in a non-aerosol containers have been utilized.

5. Claims 1, 3-12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Loth et al. (US Patent No. 5,075,026), hereinafter "Loth".

Loth teaches an improved all-purpose liquid cleaner in the form of a dilute microemulsion composition containing 1% to 10% by weight of an anionic detergent, 25 to 10%

Art Unit: 1751

by weight of cosurfactant, 0.4% to 10% by weight of perfume and the balance water, or a concentrated microemulsion composition (which read on protomicroemulsion) containing by weight, 18% to 65% of anionic and nonionic detergent, 2% to 30% of cosurfactant, 10% to 50% of perfume and the balance water which upon dilution with water will yield said dilute o/w microemulsion composition (see abstract; col. 1, lines 5-9). When intended for use in the neat form, the liquid compositions can be packaged under pressure in an aerosol container or in a pump-type sprayer for the so-called spray-and-wipe type of application (see col. 13, lines 45-48). The aerosol container generally contains instruction for use. Even though Loth does not explicitly disclose the foam to weight ratio of the composition, the effective foaming dilution range, and/or effective solubilization dilution range as those recited, it would be inherent in the composition of Loth to exhibit the same characteristics because the same ingredients and container have been utilized. Even if the teachings of Loth are not sufficient to anticipate the claims, it would have been nonetheless obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the foam to weight ratio, the effective foaming dilution range, and/or effective solubilization dilution range of Loth to be within those recited because similar, if not the same, ingredients contained in a aerosol containers have been utilized.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler or Loth in view of Baeck et al. (US Patent No. 5,679,630), hereinafter "Baeck"

Fowler or Loth teaches the features as described above. Fowler, however, fails to disclose the incorporation of enzymes into the composition.

Art Unit: 1751

Baeck teaches protease enzymes having improved proteolytic activity, substrate specificity, stability and/or enhanced performance (see col. 1, lines 53-58) which can be used in any detergent composition or concentrated detergent compositions where high sudsing and/or good insoluble substrate removal are desired (see col. 21, lines 1-12) such as in cleaning fabrics, cleaning dishes and for personal cleansing (see col. 2, lines 16-32).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate enzymes into the composition of Fowler or Loth because this would provide improved proteolytic activity, substrate specificity, stability and/or enhanced performance as taught by Baeck.

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-3, 5-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5, 6, 11 and 12 of copending Application No. 10/787,266. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to similar foam-generating kit comprising similar compositions differing only in that the present application requires a solvent, however, a solvent is not excluded from the “comprising” language of the copending application. Additionally, even though the copending application does not explicitly disclose the effective foaming dilution range, and/or effective solubilization dilution range, it would have been obvious to one of ordinary skill in the art to reasonably expect the present dishwashing composition to exhibit similar properties because similar ingredients in similar foam-dispensing containers have been utilized.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 1-3, 6-12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, 6, 11 and 12 of copending Application No. 10/787,343. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to similar foam-generating kit comprising similar compositions differing only in that the present application requires a solvent, however, a solvent is not excluded from the “comprising” language of the copending application. Additionally, even though the copending application does not explicitly disclose the effective foaming dilution range, and/or effective solubilization dilution range, it

Art Unit: 1751

would have been obvious to one of ordinary skill in the art to reasonably expect the present dishwashing composition to exhibit similar properties because similar ingredients in similar foam-dispensing containers have been utilized.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lorna M. Douyon  
Primary Examiner  
Art Unit 1751